



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-48-1998 (O&M)
Reserved on: 15.02.2025
Date of decision: 24.04.2025

HARISH CHANDER

..Appellant

Versus

MOHINDER KAUR AND ORS

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Alka Chatrath, Advocate
Mr. Nikhil Singh, Advocate
for the appellant.

Mr. Rajiv Godara, Advocate
for respondents.

ANIL KSHETARPAL, J.

1. Brief facts:-

1.1 The defendants assail the correctness of concurrent findings of fact arrived at by the Courts below while decreeing plaintiffs' suit for declaration that they are owners in possession in equal shares of land measuring 328/747th share of 37 kanals and 7 marlas on the basis of two sale deeds dated 21.09.1976 and 22.11.1976 and the High Court's order passed on 26.07.1986 on the basis of settlement is not binding on their rights.

1.2 In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

1.3 Sh. Pokhar Dass was owner of 37 kanals and 7 marlas land. His two sons and wife filed a civil suit on 02.03.1972 for grant of decree of declaration that they are owners in possession of the property on the basis of family settlement. Sh. Subhash Chander and Sh. Harish Chander claimed ownership in equal shares of land measuring 37 kanals and 7 marlas,



whereas, Smt. Rukmani Devi, his wife claimed to be an owner in possession of land measuring 35 kanals and 4 marlas.

1.4 In the present case, the adjudication shall be made with respect to 328/747th share of land measuring 37 kanals and 7 marlas. On the basis of written statement admitting the plaintiffs claim, the suit was decreed on 08.03.1972, which was subsequently challenged by Sh. Pokhar Dass in Civil Suit No.3029 of 1972. The suit was dismissed by the trial Court, however, in appeal by Sh. Pokhar Dass, the Appellate Court upheld the decree qua Smt. Rukmani Devi and Sh. Subhash Chander but set aside the decree dated 08.03.1972 in favour of Sh. Harish Chander qua his share. Two regular second appeals were filed, one by Sh. Pokhar Dass and second by Sh. Harish Chander. Sh. Pokhar Dass withdrew his appeal, whereas, in the appeal filed by Sh. Harish Chander, the parties entered into a settlement resulting in setting aside the First Appellate Court's judgment while restoring the trial Court's judgment. The decree dated 08.03.1972 was upheld. However, during the pendency of first appeal before the First Appellate Court, two sale deeds were executed by Sh. Pokhar Dass with respect to 8 kanals and 2 marla land and 12 kanals and 6 marlas land on 21.09.1976 and 22.11.1976, Sh. Mohinder Singh was already a tenant in possession of the property. Sh. Mohinder Singh died and his widow and his children filed the present suit. The defendants contested the suit on the ground that Sh. Pokhar Dass was left with no right, title or interest in the suit property after transferring the property vide decree dated 08.03.1972. Both the Courts decreed the plaintiffs suit on the ground that Section 52 of the Transfer of Property Act, 1882 (in short '1882 Act'), shall not be applicable because in the regular second appeal, Sh. Pokhar Dass colluded resulting in setting aside the First Appellate Court's judgment passed on 28.08.1976.



2. Arguments addressed:-

2.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the scanned copy of requisitioned record.

2.2 The learned counsel for the appellant has submitted that Sh. Mohinder Singh, the vendee was in the knowledge of the pending suit as he appeared as PW-5. He submits that Section 52 of the 1882 Act would be applicable and the sale of the property shall be subject to the decision of the case. He further submitted that Section 52 of the 1882 Act protects the bonafide transferee but not the rights of a transferee, who knew about the pending litigation.

2.3 Per contra, learned counsel for respondent has submitted that the judgment passed by the High Court on 26.07.1985 is the result of collusion, hence, the case is an exception to Section 52 of the '1882 Act'.

3. Analysis and Discussion:-

3.1 At this point, it is important to analyze the relevant legal provision, therefore, Section 52 of the '1882 Act' is reproduced below:-

“52. Transfer of property pending suit relating thereto.
—During the pendency in any Court having authority within the limits of India excluding the State of Jammu and Kashmir or established beyond such limits by the Central Government, of any suit or proceeding which is not collusive and in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

[Explanation.—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or



order and complete satisfaction or discharge of such decree or order, has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

3.2 It is evident that alienation of the suit property is subject to the decision of the case unless it is proved that such proceedings were collusive or in a case the immovable property is directly or specifically not in question. The effect of doctrine of *lis pendens* as embodied in Section 52 of the ‘1882 Act’ does not annul transfer of the property affected by the parties to a suit but it only renders it subservient to the rights of the parties thereto. In other words, Section 52 makes the alienation of the property subject to the decision of the case and it will not affect the rights of the parties, however, there is an exception to the aforesaid rule of *lis pendens*. If it is proved that the litigation was collusive, then Section 52 would not be applicable. In this case, it is evident that first appeal filed by Sh. Pokhar Dass was allowed on 26.08.1976 with respect to the share of Sh. Harish Chander in the decree dated 08.03.1972. In other words Sh. Pokhar Dass was declared the owner of land measuring 18 kanals and 13 marlas approximately. He sold some part of the property in favour of Sh. Mohinder Singh, predecessor in interest of the plaintiffs. Thereafter, in order to defeat the rights of the purchaser, he entered into settlement. Hence, the rule of *lis pendens* will not be applicable. The plaintiffs have been sold total land measuring 16 kanals and 8 marlas. In the regular second appeal, the plaintiffs or their predecessors were not impleaded as a party. There are only two exceptions to the applicability of Section 52 of the ‘1882 Act’. It is crystal clear that the matter at hand falls within the exceptions; hence, the transfer of property is not subject to the application of Section 52 of the ‘1882 Act’.



4. Decision:-

- 4.1 Keeping in view the aforesaid discussion, there is no ground to interfere.
- 4.2 Consequently, the appeal is dismissed.
- 4.3 All the pending miscellaneous applications, if any, are also disposed of.

24th April, 2025
Ayub

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No